



Executive Summary
Department of Revenue and Taxation
Oversight Over Nonprofit Organizations
OPA Report No. 25-01, January 2025

Our audit of the Guam Department of Revenue and Taxation’s (DRT) handling of nonprofit organizations (NPO) revealed challenges in the monitoring and oversight of 1,536 NPOs, of which 625 were active and approved and 911 were inactive or revoked as of August 2023. NPOs are tax-exempt organizations organized for purposes other than generating profit and in which no part of the organization’s income is distributed to its members. DRT oversees 16 different types of NPOs. Specifically, our audit found DRT faced (a) challenges in monitoring active NPOs annual reports, (b) limitations with standard operating procedures pertaining to the registration process for tax-exempt organizations, (c) significant manpower shortages, (d) periodic audit challenges, and (e) missing required documents on file. DRT management needs to address and resolve these gaps to help strengthen its regulatory framework, enhance public trust, and ensure equitable treatment of all nonprofit organizations under its jurisdiction.

Challenges in Monitoring Nonprofit Annual Reports

Public Law (P.L.) 37-63 and §14102, Chapter 14, Title 18 of the Guam Code Annotated (GCA) states that nonprofit organizations listed, but are not limited to, shall annually file a financial report within ninety (90) days of the close of its fiscal year. Although the provision that any nonprofit organization shall be caused to annually publish within forty-five (45) days of the close of its fiscal year in a newspaper of general circulation in Guam has been removed in P.L. 37-63 on February 9, 2024, organizations should have abided by the provision of the law before this date.

DRT lacked enforcement for the tracking of nonprofit organizations’ annual report postings. DRT does not have an effective monitoring system. There is no database that can provide the agency with the ability to extract, sort, and manipulate data to efficiently assess if a nonprofit organization is in compliance or not. The responsibility for this task was not held by any individual who must manually review each nonprofit organization’s activities to ascertain if they have published their annual reports.

Infrequent Revocations of Nonprofit Organizations (2005 and 2022)

On June 17, 2005, DRT issued approximately one thousand (1,000) letters to non-compliant tax-exempt organizations requesting to submit their financial statements. A second letter was then sent on August 10, 2005, that failed to comply with the submission notice. These organizations were issued, via certified mail, a “Notice to Revoke Gross Receipts Tax Exempt Status”, and a “Notice of Intent to Revoke Exempt Status” for income tax purposes. Another massive revocation was done in 2022.

Upon our review of DRT’s revocations of nonprofit organization that are not in compliance with regulatory requirements, we identified a significant lapse in DRT’s oversight procedures. Specifically, this concern regards the infrequent revocations of non-compliant tax-exempt

organizations over a period of 17 years. The prolonged negligence has led to a failure in ensuring that tax-exempt statuses are appropriately revoked when necessary.

As a result, several, if not hundreds, of tax-exempt/nonprofit organizations continued to operate under the organization's oversight. These organizations could potentially have engaged in unauthorized activities and misused their tax-exempt status.

Limitation with DRT Standard Operating Procedures

The OPA received only one documented SOP from the Technical Research & Appeals Bureau (TRAB), which pertained to the registration process for tax-exempt organizations. However, it was noted that this SOP did not align with the statutory requirements outline in §1923, Chapter 19, Title 1 of the GCA. According to these regulations, SOPs are expected to serve as formal written instructions, aimed at documenting operational procedures and guiding the performance of routine activities within government agencies.

It is mandated that SOPs should encompass how the agency carries out necessary actions aligned with government policies, well within the agency's jurisdiction and the specific actions authorized in the agency's enabling legislation. These SOPs shall also be made readily available to the public on each agency's website. Organizations that lack well-documented SOPs often find themselves heavily reliant on key individuals possessing critical institutional knowledge. The absence of these individuals can lead to operational disruptions, as crucial processes may remain undocumented.

Manpower Challenges at DRT

During the entrance conference meeting, the Acting TRAB Administrator highlighted an ongoing issue faced by DRT – the persistent manpower challenge within the department. Currently, the bureau comprised only two staff members, including the Acting Technical Research and Appeals Bureau Administrator.

The Examination Branch grappled with a significant staffing shortage as it comprised of only eight employees. At the time of our interview, the team allocated their resources towards the examination of Federal contracts. Unfortunately, the Examination Branch has experienced several departures this year, including the loss of a supervisor and several staff members who have either retired or resigned. Furthermore, there is the potential for DRT to face the additional challenge of losing one or two more employees to retirement. This could result in operational inefficiency, productivity, and service delivery at DRT.

Periodic Audit Challenges

DRT conducted its most recent audit in 2016, which focused on a church. Prior to this, the last audit within the knowledge of the Acting Technical Research and Appeals Bureau Administrator dated back to the early 2000s, which targeted organizations involving bingo activities. DRT was actively engaged in identifying individuals or companies engaging in potentially unauthorized tax-exempt activities. However, the progress of these efforts remains uncertain, as they were under the purview of the Tax Enforcement Division. Regarding the initiation of NPO audits within DRT, there is currently no standardized procedure in place; instead, such audits are conducted on a case-by-case basis. The responsibility falls to the Tax Enforcement Division to conduct background checks and determine whether there are any NPOs that require the attention of TRAB.

Missing Required Documents on File

After gathering data and examining 153 approved organizations, we found that there are missing documents from the physical files of nonprofit organizations. The missing documents may be due to a lack of a proper filing system at DRT. Certain legal/regulatory frameworks still require original physical documents, making a physical filing system essential for compliance. A digital filing system on the other hand is helpful so documents can be easily and quickly searched, categorized, and retrieved, which overall improves efficiency. A hybrid filing system that leverages both a physical and digital format can provide a more secure, effective, and efficient approach to document management and compliance. Without the proper tools to assess if nonprofit organizations have the required registration documents, they risk losing their tax-exempt status, face penalties, and delay the approval process.

Missing Privilege Tax Requirements (Form FCN 2-2-111)

Within DRT's exempt organization requirements document was the requirement to submit Form FCN 2-2-111. Upon our review, we found 61 out of 153 approved nonprofit organizations did not have a Form FCN 2-2-111 within their file. This may be due to inadequate document management procedures, poor record-keeping practices, lack of oversight or monitoring, lack of personnel, and/or high volume of work.

Inadequate document management procedures and poor record-keeping can often lead to incomplete files, making it difficult for the department in charge of ensuring annual compliance for nonprofit organizations to retrieve critical information when needed. On the other hand, the absence of effective oversight or monitoring magnifies the issue, as there is no system in place to regularly review and ensure compliance with documentation requirements. In addition, with insufficient personnel, there is an increased chance of additional burden on existing staff, which, when combined with a high volume of work, can result in overlooked items. Together, these factors create a perfect combination of documentation deficiencies that jeopardize operational integrity and expose the organization to risks of non-compliance and inefficiencies.

Organizations Without Specific Event Exemption Application Form and Registration of Tickets

The Specific Event Exemption Application Business Privilege Tax Form is an application that DRT has to allow exemption from Business Privilege Tax relative to organizations who apply for specific exemptions under §26203(j), Chapter 26, Title 11 of the GCA. For the purposes of fundraising whereby the issuance of tickets is required for any specific event to be held, an application of Form FCN 2-2-139 should be filed with the Business Privilege Tax Branch at least twenty (20) days prior to the initial particular event for which the exemption is claimed. Form FCN 2-2-136 (Registration of Tickets), the first and last tickets printed for the event, and a statement from the printing company certifying the number of tickets printed should accompany the specific event application.

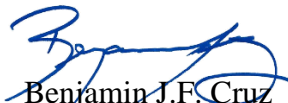
We found that there are several tax-exempt organizations that had these forms, while others did not. There was no response from DRT officials regarding our question on monitoring or audits regarding organizations who do not have this form on file. This lapse in monitoring could be due to the inadequate record-keeping, inadequate monitoring practices, and/or possible neglect in

maintaining proper compliance documentations. It may indicate that these organizations are potentially engaging in fundraiser activities without proper authorization or clearance.

Conclusion and Recommendations

The issues identified within the DRT regarding its oversight of nonprofit organizations' compliance highlight critical gaps that need to be addressed in the effectiveness of their operating procedures, resource allocation, periodic audit initiatives, and reporting requirements verification. The absence of essential registration documents and the challenges in monitoring annual reports jeopardize the standing and transparency of nonprofit organizations in Guam. The reliance on outdated filing systems and inadequate manpower magnifies these issues, potentially leading to lapses in oversight and enforcement.

To mitigate these risks, we recommend DRT prioritize recruitment efforts, with the help of other appropriate governmental bodies, and invest in continuous training for its employees to strengthen the workforce. In addition, implementing a structured approach to auditing, supported by standardized procedures and clear oversight systems, will be crucial in maintaining accountability and preventing potential misuse of tax-exempt status by nonprofit organizations. By addressing these critical operational issues, DRT can help strengthen its regulatory framework, enhance public trust, and ensure equitable treatment of all organizations under its reach.



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